workshops to address several issues that pertain to performance measurements.[39] Despite three weeks of workshops, and nearly four weeks during which CLECs and ILECs attempted to resolve issues, the issue of performance standards was not addressed. Instead, at the urging of the CLECs, the staff has agreed to have Pacific Bell and GTE provide information as to whether each of the measures that has been considered in the California workshop has an analogue function. The resources that the CPUC, responsible for a large state, has been able to devote to this process substantiates MCI's concern that many states, particularly the smaller ones, will not be able to devote resources to develop performance standards contrary to the Commission's belief.[40]

Because performance standards are so critical and should therefore be binding, the Commission should adopt model performance standards as rules, particularly in light of the near universal failure of the states to take any action on performance standards. At a minimum, however, the Commission should adopt model standards as guidelines. In accordance with the Commission's rationale, such guidance would be non-binding and would not preclude a state from establishing its own requirements. However, as we have seen, without Commission action,

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[39]The CPUC has asked Pacific Bell and GTE to provide information as to whether there are analogues that exist for the measures proposed. It is unclear what will be proposed by the ILECs, however, the staff has determined that if consensus cannot be reached, the issue of analogues and standards will be addressed in a more formal proceeding to be opened at a later date.

[40]NPRM ¶ 125.

the states have not been inclined to address this very critical issue on their own and the CLECs have been unable to obtain much needed objective performance standards for OSS functions, interconnection and unbundled elements through negotiation with the ILECs. Thus, given the inconsistent record in the states concerning development of performance standards, the additional guidance from the Commission would establish a level of expectation for reasonable performance that would prove invaluable to the CLEC community which continues in its struggle to obtain reasonable and certain service levels.

B. The Eighth Circuit Decision Does Not Affect the Ability of the Commission to Establish Objective Performance Standards

There is no question that the Commission has the authority to issue rules that govern the terms and conditions under which elements -- including OSS -- must be unbundled. Section 251(c)(3) of the Act requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Section 251(c)(3). In Iowa Utilities Board, the Eighth Circuit expressly upheld the Commission's authority to promulgate binding regulations implementing this section of the Act. See Iowa Utils Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997). Objective performance standards merely quantify the time within which it is "reasonable" to provide access to a given network element, and the reasonableness of the quality and accuracy of such access.[41]

[41]That portion of the Eighth Circuit's decision striking down the Commission's "superior quality" rules is not relevant to the issue of objective performance standards. There, the Eighth Circuit reviewed section 251(c)(2) of the Act -- which deals with interconnection, not unbundling -- and held that that section's requirement that ILECs provide interconnection "that is at least equal in

C. At a Minimum, Default Benchmarks Should be Established Where Retail Analogues are not Readily Available

If the Commission does not establish a complete set of objective performance standards at this time, at a minimum it must act now to establish default benchmarks when there is no readily available retail analogue. MCI firmly believes that for each performance measurement proposed by LCUG, there is a retail analogue. Thus, for every appropriate measurement, ILECs should be required to report on their own performance and be obligated to provide parity performance to competitive LECs.

If, however, there is no readily available retail analogue for a given measurement, it is imperative that the incumbent LEC be required to meet an objective performance benchmark. Because parity is measured by reference to the ILECs' performance, if that performance is not reported, there would be nothing against which to measure the service CLECs are receiving from the ILECs. And because ILECs have every incentive to degrade performance to their competitors, if there is no way to establish parity, and no performance benchmark in place for a given category, it is reasonable to conclude that ILECs will provide poor performance with respect to that category. The only way to ensure that does not occur is to impose, for each measurement for which there is no readily available retail analogue, objective performance

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quality to that provided by the local exchange carrier to itself" does not mandate that the ILEC provide superior quality interconnection upon request. Iowa Utils. Bd., 120 F.3d at 812-13. That portion of the opinion says nothing about the meaning of section 251(c)(3), and certainly does not suggest that the Commission cannot promulgate rules that establish the time within which it is reasonable to provision network elements.

benchmarks that ILECs are required to meet. Accordingly, in order to avoid discrimination, MCI urges that, at a minimum, the Commission impose the objective default benchmarks suggested by LCUG in every instance in which there is no readily available retail analogue.

VI. LOCAL MARKET ENTRY CAN ONLY THRIVE WHERE THERE IS SWIFT AND EFFECTIVE ENFORCEMENT MECHANISMS THAT WOULD DETER ANTI-COMPETITIVE BEHAVIOR

The Commission has recognized the importance of enforcement mechanisms that deter anti-competitive behavior as CLECs attempt to enter the local market and recently concluded that "without enforcement mechanisms, reporting requirements are meaningless."[42] Further, the Commission has recognized the monumental challenges CLECs encounter as they attempt to build a customer base while relying on ILECs for key operations functions.[43] It is because ILECs so intimately and significantly affect a CLEC's ability to enter the market that the ILECs' incentive for anti-competitive behavior must be checked by strident enforcement mechanisms. Otherwise, as we have already experienced, monetary penalties will be written off by the ILECs as a cost of doing business -- a small cost for impeding the development of local competition.[44]

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[42]Merger Order ¶ 208.

[43]NPRM ¶¶ 7-9.

[44] See, e.g., Order Levying and Terminating Civil Penalties, Iowa Utilities Board Docket No. AIA-96-1 (ARB-96-1) (Feb. 27, 1998) (detailing the fines levied against US West for failure to provide electronic access as required by the interconnection agreement between US West and MCI. The IUB ordered US West to pay fines of $10,000 per day for 11 days, plus $1,500 per day for an additional 64 days. Despite the fines, the IUB Order, and MCI's requests before and since that Order, US West has not provided electronic access to that information or updates.).

Self-executing and pre-established enforcement mechanisms and penalties are necessary to motivate ILECs to provide an adequate level of service, and are the only effective way to deter anti-competitive behavior without additional delays from uncertain enforcement efforts.[45] As such, the Commission must not now render its guidance for performance reporting requirements a meaningless gesture through a lack of sufficient self-executing remedies.

The means by which to detect whether an ILEC is failing parity should be based on the use of the appropriate statistical tests.[46]

MCI has proposed a straightforward system of enforcement mechanisms that seek to deter both parity failures as well as failures to perform against an objective standard. There are two types of remedies: (i) per occurrence remedies for each violation of an objective standard and each failure to provide parity, and (ii) overall performance remedies for standards violations. These "overall remedies" are intended to deter the ILEC from simply calculating the per-occurrence credits as a cost of doing business. These remedies seek to ensure that CLECs have the opportunity to establish themselves as providers of quality service without fearing that the ILEC will degrade the service that it provides to CLECs, while damaging end user perception of

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[45]Self executing remedies are applied in an automatic fashion. That is, they do not require any commission or judicial action, but rather kick-in as violations occur. The Commission has recognized the value of self-executing remedies in the Bell Atlantic/NYNEX Merger Order, where it determined that the threat of such action would provide incentive to "meet predetermined performance standards." Merger Order ¶194.

[46]See infra, section IX.

CLEC performance. De minimis credits will not serve as a deterrent to the ILECs' incentive to incur small costs associated with the elimination of competition.

The per-occurrence credits are designed to reflect the degree to which the ILEC deviated from the applicable objective standard or individual parity obligation. Overall performance remedies are based on performance failures across all objective standards and not just individual violations within the reporting period. For objective standards, the methodology that MCI proposes would apply a multiplier based on the number of objective standards the ILEC violates during a reporting period and the number of months the ILEC is out of compliance for each standard. Remedies for parity failures are another matter.

For parity failures, the methodology that MCI proposes monitors two dimensions that require the use of the statistically valid z-test that is discussed later in these comments. The first dimension monitors the maximum number of measurements failing the parity test in a reporting period. For example, at the 95% confidence level, there is a 5% chance that an individual measurement will fail the test when, in fact, the results are not statistically different. One would expect that, on average, five out of 100 measurements that are not different would fail the test at the 95% confidence level. MCI believes that substantial remedies should be attached to each measurement that fails the parity test. The second dimension monitors the maximum number of repeating measurements failing the parity test. For this criteria dimension, it is necessary to determine how many measurements would be allowed to fail the test in a three successive month period before the ILEC may be found discriminatory. At an overall confidence level of 95%, the probability of falsely failing parity for three consecutive months is less than .0001. This means that for 1000 parity tests, one would expect that on average no more than 1/10 of a comparative measurement (i.e., much less than 1 measurement) would falsely fail parity.[47] MCI believes that substantial remedies should apply if the ILEC is out of compliance for three consecutive months.

Commission guidance with regard to enforcement remedies is critical because, in MCI's experience, even those states that have commenced performance measurement proceedings have rarely considered enforcement mechanisms.[48] For example, the New York Public Service Commission has adopted Interim Carrier to Carrier Performance Standards and Reporting Guidelines, but has not adopted or considered an enforcement mechanism tied to the guidelines.

Where enforcement has been addressed, such as in Bell Atlantic New York's Pre-Filing Statement ("Pre-Filing Statement"), the wholesale price reductions that Bell Atlantic- New York has agreed to for violations of the measures outlined in the New York Pre-Filing Statement are

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[47]Once a determination is made that an ILEC is not in compliance with the parity standard, the ILEC should be required to provide a plan to the CLEC and we urge the Commission to recommend to the appropriate the state commission, within 15 business days from the end of the reporting period in which the non-compliance occurred. This plan should detail why the lapse in parity happened and detail an implementation plan to take corrective action. Further, the ILEC should indicate when performance will return to a compliant level.

[48]For example, while several states in the BellSouth region have sought to address certain OSS performance requirements, such as the Georgia and Florida Public Service Commissions, and the Tennessee Regulatory Authority, none of these state commissions have considered enforcement credits in these proceedings.

inadequate and almost reward, instead of deter, anti-competitive ILEC behavior.[49] In essence, under the terms of the NY Pre-Filing Statement, discriminatory actions by an ILEC which last for fewer than two months at a time, may not necessarily require the issuance of credits because performance to all CLECs in the aggregate is considered before any credits are issued. Thus, Bell Atlantic can, in effect, discriminate against one competitor more than another, but still incur no liability for credit because of its acceptable performance for another competitor.[50] Bell Atlantic's ability to discriminate by CLEC, under the terms of the Pre-Filing Statement, should itself be sufficient to warrant significant remedial action by the offended CLEC.

A number of ILECs have proposed a system of off-setting credits as a means for enforcement.[51] Under this approach an ILEC could apply credits gained for good performance in one or more areas to areas where performance is inadequate. Specifically, an ILEC could perform poorly in critical performance areas, such as meeting installation dates, and avoid paying performance credits by over-performing in an area where over-performance is not as significant to the CLEC, such as returning an order confirmation to the CLEC in a faster than required

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[49] In the Matter of Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions pursuant to Section 252 of the Telecommunications Act of 1996, NYPSC Docket No. 97-C-0271, Pre-Filing Statement of Bell Atlantic-New York ("Pre-Filing Statement") (April 6, 1998) at Appendix 5, p. 5.

[50] Id. at 34-42.

[51] SBC has proposed such an approach which the Texas PUC has adopted. This proposal is now under consideration in CA has part of its examination into performance measurements.

interval. Such a scheme allows ILECs to engage in targeted discrimination for the most competitively critical functions.

Given the lack of consistent state action in the establishment of enforcement mechanisms for CLECs, and the distinct likelihood that egregious ILEC actions will go unchecked as a result of this inaction, it is imperative that the Commission assert its authority to propose enforcement mechanisms. Such action is not only appropriate in this instance, but vital to the CLECs' ability to thrive in the local market.

VII. THE ILECs MUST COMPLY WITH SPECIFIC REPORTING REQUIREMENTS TO ENSURE THAT THE INFORMATION THEY PROVIDE IS TIMELY AND ACCURATE

The Commission has requested comment on model reporting procedures for submission to the states, in particular, on the level and scope of reporting.[52] MCI believes that reporting must occur at some level below the state level, preferably on a city by city, market by market basis, or a similarly disaggregated level at which many ILECs already report for themselves. This is primarily because new entrants will not typically compete on a region-by-region or state-by-state basis with the ILEC. Instead, CLECs will compete in smaller geographic regions. And customers in similar geographic locations will expect the same or better service that they now receive from the incumbent. Therefore, insufficient disaggregation of this information would place CLECs at a competitive disadvantage when trying to ascertain the level of service that they

[52] NPRM ¶¶ 38-39.

are receiving in similar geographic locations from their most formidable competitors.

A. ILECs Must Meet Specific Reporting Requirements

As new entrants seek to enter the local market, it is imperative that they have immediate access to these reports, particularly for corrective and enforcement efforts. For that reason, while MCI does not oppose the idea of developing a clearinghouse for these reports as the Commission has suggested,[53] it is concerned that the process for establishing such a body and its procedural regulations will take some time to develop and then to implement.[54] As such, MCI believes that more expedient measures are needed before such a body can be established.

As stated previously, MCI believes that the Commission has the authority to establish rules for performance measurements, standards and reporting. Whether the Commission determines to suggest guidelines or to establish rules, we believe that the Commission would be the appropriate entity for submission of the performance reports and that it should, therefore, require ILEC submission of these reports to the Commission. In that way, new entrants can be assured that a regulatory authority with the expertise to review such documentation maintains the

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[53] Id.

[54] Initially, the establishment of the clearinghouse would presumably require comments on its feasibility and advisability, its appropriate membership, fee structure and proposed rules for such things as times of submission, procedures for filing and treatment of confidential information and the process for change management issues. Then, depending upon the whether the Commission determined to establish a vendor or regulators, a selection process would follow. For these reasons, MCI is concerned that the need for more immediate report submission requirements now outweighs the benefits derived from the establishment of such a clearinghouse that could take months to complete.

documents and that they will have ready access to this vital information. Moreover, as we have previously advised, many state commissions have not initiated comprehensive proceedings to establish performance requirements sufficient to make a determination as to whether the ILECs are acting a discriminatory fashion. It does not appear that these commissions will take steps to require that ILECs to submit performance reports. Therefore, we also ask the Commission to recommend that the states require the ILECs to file performance reports because of their critical importance to a CLEC's ability to seek corrective and then enforcement efforts when discriminatory behavior is detected.

MCI advocates the submission of two series of reports by the ILECs. The first series of reports should be filed with the Commission for the purpose of monitoring potentially discriminatory actions by the ILECs as compared to both parity and objective performance benchmarks. The second series of reports should be submitted to individual CLECs who interconnect with, purchase elements or resell service within the ILEC's region, to allow CLECs to monitor their specific performance results compared to both parity and objective benchmarks. The CLECs report should be detailed enough to demonstrate specific ILEC performance to the CLEC, and to provide the CLEC with the ability to make a comparison between those as well as with the CLEC industry in the aggregate. Moreover, these reports should be used as one means of determining whether the ILEC has met its nondiscrimination obligation, and, if not, to discern which specific areas require immediate correction and enforcement action.

The reports filed with the Commission should incorporate a summary of results so that the reviewing body can quickly ascertain whether an ILEC has met its performance obligations. A more detailed report covering only those measurements which failed to demonstrate the existence of parity performance should also be incorporated. By employing this approach, the Commission would be able to focus on a subset of the data which is necessary to evaluate compliance and, if need be, allow the CLEC to seek enforcement action. We encourage the Commission to recommend that the state commissions require submission of such reports as well. Reports that detail ILEC performance for specific CLECs should be filed as proprietary so as not to compromise the confidentiality of certain sensitive performance information.

The Commission has also requested comment on the frequency of ILEC reporting.[55] ILEC reporting should occur on a monthly basis. By requiring monthly reporting, ILECs, CLECs, and regulators can quickly uncover performance deficiencies and work together to correct them.

B. It is Essential that CLECs Have the Ability to Audit Performance Reports

It is essential that CLECs have the right and ability to audit the underlying data and all related processes bearing upon the results reflected on the monthly performance reports. The ability to audit is, simply put, a generally acceptable condition of the vendor-client relationship. Many ways exist for ILECs to manipulate data so as to make performance look better for

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[55]NPRM ¶ 46.

CLECs or worse for the ILEC.[56]

If ILECs are purposely deceiving or careless in reporting to state regulatory commissions, they have even more incentive to do the same with competitors. At the recent NARUC winter meeting in Washington DC, Professor Andrew Snow noted in a February 28, 1998 presentation that "reliability assessment [is] only as good as the integrity of the reported data." For his dissertation, Professor Snow compared outage data filed between July 1992 and September 1996 under the Commission's network reliability outage reporting requirement for large scale outages. Snow found that "during the study period 29 filed ARMIS outages that were over the 30,000 [lines affected]/30 minute threshold were not reported to the FCC as large scale outages. Industry representatives say that 24 of the 29 were misreported in ARMIS and are really under the threshold. This suggests serious data integrity problems in one or both of these reporting venues."

With respect to ILEC performance, it is essential that CLECs be able to verify independently and on a periodic basis, the integrity of the reporting and operational processes which underlie the performance of the ILEC, rather than through exclusive reliance on ILEC provided reports. The ILECs should be required to maintain the appropriate performance data coincident with the statute of limitations for a state breach of contract action.

[56]As the Public Utilities Commission of Ohio (PUCO) staff recently discovered, Ameritech, in early 1997, appears to have skewed reporting on its own service quality reporting to the Commission. See PUCO March 6, 1998 Order Initiating Investigation of Ameritech - Ohio compliance with certain portions of the state's Minimum Telephone Service Standards.

C. CLECs Must Have Access to ILEC Raw Data

The Commission seeks comment on whether reporting procedures should require the provision of raw data by the ILECs should be done at the initial stage of the reporting process.[57] MCI believes that CLECs must be able to have access to the ILEC raw data once performance measurements are established and not just when an audit becomes necessary. Given that the ILEC is providing a service to a CLEC, it is essential that CLECs be able to review ILEC performance data. Such a requirement is necessary so that a CLEC can review its own data on an ongoing basis to better track, and further analyze if necessary, ILEC performance.

VIII. THE COMMISSION SHOULD CONSIDER THE IMPLEMENTATION OF ADDITIONAL MEASUREMENTS AS NECESSARY

While the Commission recognizes that there may be additional measurements that may be required to prevent ILECs from discriminating against CLECs,[58] it must bear in mind that the establishment of rules or guidelines in this regard will evolve over time. As new entrants gain more experience with their suppliers, currently unknown opportunities for discrimination by ILECs will become evident. Despite the fact that the Commission is proposing measurements as guidelines, it must also determine how to provide guidance with respect to new and/or changing measurements that may be required.

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[57]NPRM ¶ 114.

[58]NPRM ¶ 36.

As the competitive local market continues to grow, and business experience and technology advances, performance areas will almost certainly change and evolve beyond those areas under consideration here. For example, as we have stated earlier, likely there will be a need for performance measurements to address aspects of collocation, emergency services, and number portability as well. MCI believes that the Commission should seek further comment on an appropriate process to address the evolution of performance measurements.

IX. THE COMMISSION SHOULD ADOPT A STATISTICALLY VALID METHOD TO EVALUATE PARITY

The Commission clearly recognizes the importance of a statistically valid approach to evaluating parity.[59] MCI agrees that an appropriate statistical method must be employed to assess and evaluate ILEC retail as compared to wholesale performance. The establishment of a uniform methodology would guarantee that all ILECs conform to one methodology and that the parity criteria are not subjective. Although the t-test is a generally accepted test to compare two means, it is often used when sample sizes are small and one can assume a normal distribution.[60] LCUG has appropriately advocated the use of a z-test which is similar to a t-test, but is simpler to use and can also better address larger sample sizes.

In looking at the appropriate statistical approach, the Commission recognizes that a

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[59]NPRM ¶ 34.

[60]Hubert M. Blalock, Social Statistics, revised second edition, McGraw Hill, 1979, p. 248.

pooled-variance t-test may be an appropriate test.[61] LCUG's proposed z-test is very similar to the pooled variance t-test. Contained in Attachment B is a paper prepared by LCUG examining the appropriate statistical methodology to be used when evaluating performance. It is important to note that the Commission may have erred in its conclusion concerning the significance level of a test procedure.[62] MCI's statisticians have indicated that the significance level of a statistical test measures the likelihood of incorrectly declaring non-parity when parity is being provided, not the likelihood that the ILEC is providing parity.

The z-test as proposed by LCUG requires that there be sufficiently large samples, to determine whether the measurement sample is skewed. Approximately thirty observations would constitute the minimum sample size.

MCI does not support the proposal made by BellSouth.[63] The proposal calculates variance across all months for which data is collected. However, if there is significant seasonal variation, the resulting variance could be large and the test will not be able to detect true differences in the two samples.

X. CONCLUSION

While the Commission has crafted suggested guidelines for state commissions in

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[61]NPRM, Appendix B, fn. 1.

[62]NPRM, Appendix B, fn. 2.

[63]NPRM, Appendix B, ¶ 6.

addressing performance measurements, MCI believes that the Commission has the authority to establish rules for such measurements, as well as performance standards and remedies. At a minimum, MCI requests that in addition to guidelines on performance measurements, the Commission provide guidance with respect to performance standards and enforcement remedies. As a result of resource constraints that state commissions face, the outlook for state action that will address all aspects of performance requirements, including enforcement mechanisms, standards, and reporting, is dim. As such, the more extensive guidelines the Commission can provide on ILEC performance, the better the outcome for advancing local competition.

The Commission then must be sure to use the performance results on a going-forward basis, as one dimension of evaluating 271 applications made for in-region long-distance entry. More importantly, if the Commission chooses to defer to the states for critical reporting and standards, it must determine, as part of its 271 analysis, whether the BOCs and the states have followed through and committed to robust standards in order to prevent backsliding after 271 entry. Given that the Commission has recognized how critical it is for CLECs to compete fairly with the ILECs, it should establish strong guidelines that will not only give guidance to the states, but provide assurance that a competitive market can develop.

Respectfully submitted,

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Dated: June 1, 1998

CERTIFICATE OF SERVICE

I, Mellanese Farrington, hereby certify that on this 1st day of June 1998, I served by first-class United States Mail, postage prepaid, a true copy of the foregoing Comments, upon the following:

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ATTACHMENT A

PERFORMANCE MEASUREMENTS, STANDARDS, AND ENFORCEMENT ACTIONS

Section A - Summary

Introduction

Since Bell Atlantic controls the essential facilities for local service and MCI is a direct threat to Bell Atlantic's local market share and bottom line, Bell Atlantic has the **ability and motivation** to discriminate against MCI. Bell Atlantic's control of essential facilities makes MCI's success in the local telecom market directly dependent on the level of service that Bell Atlantic provides to MCI and its customers. Further, as MCI will be competing directly with Bell Atlantic for its local customers, Bell Atlantic will be motivated to protect its market share and revenue stream. If Bell Atlantic's ability and motivation to discriminate are unchecked, MCI will likely receive degraded service.

In the 1996 Telecommunications Act, legislators mandated that CLECs must receive parity and a "meaningful opportunity to compete" so that local competition can become a reality. These requirements are necessary because Bell Atlantic controls the facilities that are essential to providing local service to end users and because of Bell Atlantic's strong motivation to provide degraded service to CLECs to protect their market share. There is nothing (in the short term) that CLECs or regulators can do about Bell Atlantic's control of essential facilities. However, the industry ***can*** attempt to remove their ability to discriminate without detection with performance reporting and their motivation to discriminate with sufficient credits.

The existence of parity can only be monitored through comparative reporting. This reporting seeks to prevent Bell Atlantic discrimination without *detection*. Performance standards will ensure that MCI receives a consistent and adequate level of service from Bell Atlantic. Even as parity fluctuates, MCI will know the minimum level of service to plan on while making and keeping reasonable service commitments to its customers. These performance standards, in combination with a parity requirement, help to ensure MCI's meaningful opportunity to compete. Performance credits are designed to provide sufficient ***motivation*** for Bell Atlantic to meet each performance standard **and** provide parity.

Summary

When the FCC issued the Merger Order on August 14, 1997, MCI immediately set out to develop a comprehensive negotiations proposal including the following components: contract language, measurements and standards, reporting, and credits. MCI's goals and objectives for Bell Atlantic's performance are set forth in this section.

PERFORMANCE MEASUREMENTS, STANDARDS, AND ENFORCEMENT ACTIONS

In developing its proposal, MCI used the Merger Order as a starting point. The FCC's Merger Order outlined 21 core performance measurements and required that Bell Atlantic negotiate performance standards with MCI. Clearly, performance measurements around every standard are necessary to determine whether standards are being met. Finally, performance credits attached to each standard are necessary as a primary enforcement mechanism.

Additionally, Bell Atlantic and MCI must agree on an appropriate method to determine the existence of parity performance for each measurement comparison as well as a procedure for determination of Bell Atlantic's overall compliance with its parity obligation. Further, enforcement actions for parity compliance failures must also be in place. MCI was unable to introduce these procedures in negotiations before negotiations broke down but has included them here along with credits attached to overall parity compliance failures.

The MCI negotiations proposal takes into account all of the above principles. Section B describes each measurement, its methodology and associated objective standard. Section C lays out the performance credits structure that should be utilized for Bell Atlantic's failure to meet one or more objective performance standards. Section D describes the statistical model to be used to compare, on a measurement by measurement basis, Bell Atlantic's retail vs. wholesale performance to determine the existence of parity. Section E lays out the statistical procedure that should be utilized to determine compliance, or parity on an aggregate basis, and attaches a schedule of credits that apply in the event that Bell Atlantic fails to comply with its statutory obligation to provide parity to MCI.

Performance Measurements

MCI's measurement plan, capable of deterring discriminatory behavior and demonstrating performance against a set benchmark, incorporates the following characteristics:

- it permits direct comparisons of the MCI and CLEC industry experience to that of Bell Atlantic though recognized statistical procedures
- it accounts for potential performance variations due to differences in service and activity mix, and geographic area (e.g. MSA)
- it measures not only resale services but experiences with UNEs and OSS interfaces, and
- it produces results which can be used to demonstrate that nondiscriminatory access to OSS functionality is being delivered across all interfaces and a broad range of resold services and unbundled elements.

The measures employed address the availability, timeliness of execution, and accuracy of execution of Bell Atlantic's service. Further, the benchmarks and performance standards will be used to determine whether new service providers are receiving nondiscriminatory treatment.

PERFORMANCE MEASUREMENTS, STANDARDS, AND ENFORCEMENT ACTIONS

The industry has recognized the need for the disaggregation of ILEC performance reports in order to accurately compare the results of an ILEC's retail vs. wholesale performance. This concept is reflected in MCI's negotiations proposal and has been broadly rejected by Bell Atlantic. According to DOJ expert witness Michael J. Friduss, "Meaningful determinations of parity performance require 'apples to apples' comparisons of the functions performed by a BOC. Where, for example, the same function is performed by different personnel, with different facilities, or for different customer classes or products, more refined comparisons are required. Thus, for example, the function of installing POTS service for consumer and business customer may be identical, but because business customers may be more sensitive to installations delays, a meaningful comparison may require juxtaposition of only business customer installation intervals."[1]

MCI's proposal calls for performance reports to be provided by market service area (MSA) to account for the many geographic differences in ordering activity, customer trouble report rates and maintenance and provisioning practices. Further, MCI's Standard Service Groupings must be reported separately to account for differences in the needs and expectations of customers (e.g. Resold Business POTS vs. Resold Residence ISDN). The U.S. Department of Justice validates this position as well, "First, market parity refers to equality between appropriate customer groups. Customer groups may be broken out geographically or by class of service. Geographic market parity means comparing CLEC results to BOC results within the geography the CLEC has chosen to offer service."[2] DOJ goes on to say, "Class of service market parity means comparing CLEC results to BOC results within the classes of service the CLEC has chosen to offer. For example, if a CLEC offers service to small-business end users only, for purposes of comparison a BOC may have to provide its retail results for such small-business users."[3] This level of disaggregation was again absent in Bell Atlantic's negotiations proposal.

Objective Standards vs. the Parity Standard

There are two types of standards: objective standards that establish requirements for consistent and adequate performance, and parity standards. Parity requires that MCI receive service that is equal to or better than the service that Bell Atlantic provides itself and requires comparative reporting that depicts Bell Atlantic's retail

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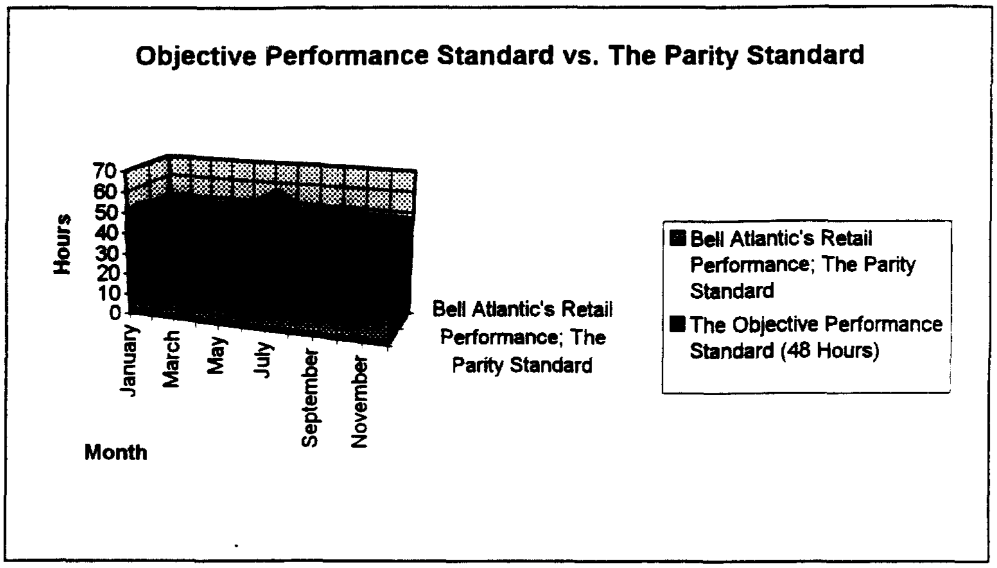
[1] Affidavit of Michael J. Friduss on behalf of the U.S. Department of Justice in response to BellSouth's application to section 271 in South Carolina. Paragraph 31.

[2] Affidavit of Michael J. Friduss on behalf of the U.S. Department of Justice in response to BellSouth's application to section 271 in South Carolina. Paragraph 31.

[3] Affidavit of Michael J. Friduss on behalf of the U.S. Department of Justice in response to BellSouth's application to section 271 in South Carolina. Paragraph 33.

vs. wholesale performance. The MCI Proposal utilizes both approaches. Bell Atlantic is required to meet objective performance standards which will enable MCI to conduct business with some degree of certainty, but in all cases, provide service at no less than parity.

The graph below provides an fictional example of the performance levels required both by Bell Atlantic's obligation to parity and its obligation to meet particular objective performance standards (e.g. all UNE channelized DS1 installations within 48 hours). The graph shows how this objective standard remains constant throughout the year while Bell Atlantic's retail performance for itself (the parity



standard), fluctuates from month to month. In June, Bell Atlantic installed UNE channelized DS1 for itself in an average interval of 56.34 hours. However, Bell Atlantic's interconnection agreement with MCI requires Bell Atlantic to install this service for MCI within 48 hours. By December, the graph indicates that Bell Atlantic has improved its processes and reduced this installation interval to 24.99 hours. Although the interconnection agreement only requires Bell Atlantic to provision this service for MCI within 48 hours, Bell Atlantic is still beholden to its statutory obligation to provide parity and must provision this service for MCI within 24.99 hours as well.

Performance Reporting

The FCC Merger Order sets out examples of reporting requirements.

Performance reporting against objective standards requires the inclusion of data that indicates the percent of total activities (provisioning orders, maintenance